IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1128 OF 2005
WITH
CIVIL APPLICATION NO.1399 OF 2005

Shri Ashok Moolchand Kankaria ..Appellant.

V/s.

Tukaram Ramji Nimhan & Ors. ..Respondents.

Mr.V.Z.Kankaria for appellant.

Mr.Girish Godbole for respondent Nos. 1 to 7 & 9 to 12.

CORAM: A.M.KHANWILKAR,J
DATE : JANUARY 25, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant materials on record. In my opinion, there is no reason to take different view than the one already taken by the lower court while rejecting relief of temporary injunction pressed by the appellant. The court has rightly doubted about the maintainability of the suit which has been filed in August, 2005 in respect of termination of agreement by notice dated 21st May, 1994, being barred by limitation. That indeed is prima facie opinion recorded by the lower court.

2. To get over this position Mr.Kankaria contends that the appellant has made payment to one

of the tenants who has accepted the same in November, 1995. In such a case, contends Mr.Kankaria that termination of agreement by notice will be of no avail as the termination notice is required to be registered. In support of the submission reliance is placed on the case of **S.Saktive V/s.Venugopal Pillai reported in AIR 2000 S.C. 2633**. Even this submission does not commend to me. The argument clearly overlooks that events that unfolded after the termination of agreement by notice,thereby the rights have been created in the disputed property after termination of agreement. Besides, I find substance in the argument canvassed on behalf of the respondents and which had found favour of the lower court that on construing document of suit agreement from clause (15) thereof, it is amply clear that the agreement is a development agreement. If it is a development agreement, it is well settled that remedy of suit for specific performance is unavailable. In any case, I am in agreement with the opinion recorded by the court below that the balance of convenience is in favour of the defendants.

3. Taking overall view of the matter, at this interlocutory stage no interference is warranted in this appeal. The same will have to be rejected

making it clear that the trial court will decide the suit on its own merit in accordance with the law uninfluenced by the observations made by the lower court in the impugned order or for that matter in the present order.

4. Mr.Kankaria for the appellant submits that atleast limited protection be granted to the appellant by observing that any transaction effected in respect of the disputed property hereinafter will be subject to the outcome of the suit. It is not necessary to dwell upon this aspect as it is common ground that principle of lis pendence applies to the area where the suit property is located. Mr. Kankaria accepts that the appellant has already registered lis pendence. If it is so, no further clarification is required.

5. Hence, the appeal as well as civil application is dismissed.